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10 Attorneys for defendant
11 Asset Acceptance, LLC

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 ELIZABETH CONTRERAS, an
17 individual,

18 Plaintiff,

19 vs.

20 HSBC CONSUMER LENDING USA,
21 dba BENEFICIAL;
22 ASSET ACCEPTANCE, LLC;
23 DOES 1 THROUGH 10,

24 Defendants.
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27
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CASE NO.: C 08-02849 EMC

**CERTIFICATE OF SERVICE OF
NOTICE TO ADVERSE PARTY
OF NOTICE OF REMOVAL**

1 I, Stephanie Schmitt, declare as follows:

2 I am over the age of 18 years and not a party to this action.

3 I am employed by the firm of Simmonds & Narita LLP, counsel of record for
4 defendant Asset Acceptance LLC. My business address is 44 Montgomery Street,
5 Suite 3010, San Francisco, California 94104, which is located in the city and county
6 where the mailing described below took place.

7 On June 10, 2008, I deposited in the United States Mail at San Francisco,
8 California, a copy of the Notice to Adverse Party of Removal dated June 6, 2008, a
9 copy of which is attached to this Certificate, to be delivered to the addressees below:

10 Irving L. Berg
11 The Berg Law Group
12 145 Town Center, PMB 493
13 Corte Madera, CA 94925
14 Counsel for Plaintiff

15 Manuel Alvarez, Jr.
16 Sonnenschein Nath & Rosenthal LLP
17 525 Market Street, 26th Floor
18 San Francisco, CA 94105
19 Counsel for defendant HSBC Consumer Lending USA

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed in San Francisco on this 10th day of June, 2008.

22 By: _____



23 Stephanie Schmitt
24
25
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1 TOMIO B. NARITA (SBN 156576)
2 ROBIN M. BOWEN (SBN 230309)
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8 tnarita@snllp.com
9 rbowen@snllp.com

10 Attorneys for defendant
11 Asset Acceptance, LLC

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
LIMITED CIVIL

ELIZABETH CONTRERAS, an
individual,

Plaintiff,

vs.

HSBC CONSUMER LENDING USA,
dba BENEFICIAL;
ASSET ACCEPTANCE, LLC;
DOES 1 THROUGH 10,

Defendants.

CASE NO.: CGC 08-474587


**NOTICE TO ADVERSE PARTY
OF REMOVAL**

1 TO PLAINTIFF ELIZABETH CONTRERAS AND HER ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed
4 in the United States District Court for the Northern District of California on June 6,
5 2008 under Federal Court case number C 08-02849 EMC. A copy of the Notice of
6 Removal is attached hereto as **Exhibit A** and is served and filed herewith.

7
8 DATED: June 10, 2008

SIMMONDS & NARITA LLP
TOMIO B. NARITA
JEFFREY A. TOPOR
ROBIN M. BOWEN

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11
12 By: 
13 Jeffrey A. Topor
14 Attorneys for defendant
15 Asset Acceptance, LLC
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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mail with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

1) NOTICE TO ADVERSE PARTY OF REMOVAL

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressees indicated below:

VIA U.S. MAIL

Irving L. Berg
The Berg Law Group
145 Town Center, PMB 493
Corte Madera, CA 94925
Counsel for Plaintiff

Manuel Alvarez, Jr.
Sonnenschein Nath & Rosenthal LLP
525 Market Street, 26th Floor
San Francisco, CA 94105
Counsel for defendant HSBC Consumer Lending USA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 10th day of June, 2008.



Stephanie Schmitt

Exhibit A

ORIGINAL
FILED

JUN 6 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
3 ROBIN M. BOWEN (SBN 230309)
4 SIMMONDS & NARITA LLP
5 44 Montgomery Street, Suite 3010
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11 rbowen@snllp.com

12 Attorneys for defendant
13 Asset Acceptance, LLC

E-filing

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

EMC

16 ELIZABETH CONTRERAS, an
17 individual,

18 Plaintiff,

19 vs.

20 HSBC CONSUMER LENDING USA,
21 dba BENEFICIAL;
22 ASSET ACCEPTANCE, LLC;
23 DOES 1 THROUGH 10,

24 Defendants.

CASE NO.:

NOTICE OF REMOVAL

CV 08 2849

BY FAX

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Asset Acceptance, LLC ("Asset")
3 hereby removes to this Court the state court action described below.

4 1. On April 24, 2008, a complaint was filed against Asset and HSBC
5 Consumer Lending USA, dba Beneficial, by plaintiff Elizabeth Contreras
6 ("Plaintiff") in an action pending in the Superior Court of the State of California in
7 and for the County of San Francisco, entitled *Elizabeth Contreras v. HSBC*
8 *Consumer Lending, dba Beneficial et al.*, Case No. CGC 08 474587. A copy of the
9 state court complaint ("Complaint") is attached hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because the
11 Complaint was first received by Asset on May 9, 2008.

12 **JURISDICTION**

13 3. This action is a civil action of which this Court has original
14 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by
15 Asset pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
16 asserts federal claims against Asset allegedly arising under 15 U.S.C. § 1692 *et seq.*
17 (the Fair Debt Collection Practices Act).

18 **VENUE**

19 4. The Complaint was filed in the Superior Court of the State of
20 California, County of San Francisco. Therefore, venue in the San Francisco
21 Division or the Oakland Division of this District is proper. *See* Local Rule 3-2(d)
22 (stating "all civil actions which arise in the counties of Alameda . . . shall be
23 assigned to the San Francisco Division or the Oakland Division"); 28 U.S.C. §
24 1441(a) (providing for removal "to the district court of the United States for the
25 district and division embracing the place" where the state court action is pending).

26 //

1 5. Asset is represented by the undersigned. Defendant HSBC Consumer
2 Lending USA dba Beneficial consents to this removal. *See* Defendant HSBC
3 Consumer Lending USA's Consent to Removal filed herewith. Thus, all
4 defendants consent to the removal of this action.

5
6 DATED: June 6, 2008

SIMMONDS & NARITA LLP
TOMIO B. NARITA
JEFFREY A. TOPOR
ROBIN M. BOWEN

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10 By: 
11 Jeffrey A. Topor
12 Attorneys for defendant
13 Asset Acceptance, LLC
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Exhibit A

Irving L. Berg (SBN 36273)
THE BERG LAW GROUP
145 Town Center, PMB 493
Corte Madera, California 94925
(415) 924-0742
(415) 891-8208 (Fax)
irvberg@comcast.net (e-mail)

**ENDORSED
FILED**
San Francisco County Superior Court

APR 24 2008

CASE MANAGEMENT CONFERENCE
GORDON PARK-LI, Clerk
PARAM NATT
Deputy Clerk

ATTORNEY FOR PLAINTIFF

AUG 22 2008 - 10 AM

Deputy Clerk

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
LIMITED CIVIL

ELIZABETH CONTRERAS, an individual,
Plaintiff,

Case No.: **CGC-08-474587**

v.

**COMPLAINT SEEKING DAMAGES FOR
UNLAWFUL DEBT COLLECTION
PRACTICES**

HSBC CONSUMER LENDING USA, dba
BENEFICIAL; ASSET ACCEPTANCE LLC;
DOES 1 THROUGH 10,

DEMAND FOR JURY TRIAL

Defendants.

I. INTRODUCTION

1. Plaintiff, ELIZABETH CONTRERAS ("Ms. Contreras"), is a resident of San Francisco County. Plaintiff brings this lawsuit seeking damages from Defendants HSBC CONSUMER LENDING USA dba BENEFICIAL ("Beneficial"), and ASSET ACCEPTANCE LLC ("Asset"), for their violation of the California and Federal laws regulating consumer debt collection practices.

2. The Defendants, Beneficial and Asset, are debt collectors as defined at Cal. Civ. Code § 1788.2(c), which provides:

(c) The term "debt collector" means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection.

3. The Defendants are also debt collectors under the federal law, 15 U.S.C. § 1692a(6).

COMPLAINT SEEKING DAMAGES

CONTRERAS V. HSBC CONSUMER
LENDING USA dba BENEFICIAL

4 The California law, known as the Rosenthal Fair Debt Collection Practices Act, is at Cal. Civ. Code § 1788, *et seq.* The California law incorporates provisions of the federal Fair Debt Collection Practices Act ("FDCPA"), pursuant to Cal. Civ. Code § 1788.17, which states:

....every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j.... of Title 15 of the United States Code [i.e., the FDCPA].

5. Plaintiff, by this action, seeks statutory damages, attorney's fees and costs.

II. JURISDICTION AND VENUE

6. Jurisdiction in this court is conferred by 15 U.S.C. § 1692k(d).

7. Venue is proper in this county because Defendants do business in this county, and the collection communications were received in this county.

III. PARTIES

8. Plaintiff, Elizabeth Contreras, is a single woman who resides in San Francisco, California.

9. Defendant Beneficial has a principal office at c/o HSBC Finance Corporation, 2700 Sanders Road, Prospect Heights, IL 60070. Beneficial is a debt collector as defined at Cal. Civ. Code § 1788.2. Beneficial is amenable to service of process on an officer at its principal office.

10. Defendant Asset receives its mail for its principal office at P. O. Box 2036, Warren, MI 48093-7132. Asset is a debt collector as defined by 15 U.S.C. § 1692a(6), and as defined by Cal. Civ. Code § 1788.2.

11. Plaintiff is ignorant of the true names or capacities of the defendants sued herein under the fictitious names of DOE ONE through TEN inclusive.

12. Each of the fictitiously named Doe Defendants is responsible in some manner for the wrongdoing alleged herein, and is liable for the damages recoverable by Plaintiff. Each of the Defendants was acting as agent or employee for the others. Plaintiff will seek leave of the court to name the Doe defendants when their true names and identities are ascertained.

13. Defendants Beneficial and Asset are hereafter sometimes referred to collectively

1 as "Defendants."

2 IV. FACTUAL ALLEGATIONS

3 14. Some time ago, Plaintiff obtained a credit account from Defendant Beneficial.

4 15. Plaintiff used the account for purchase of consumer goods for Plaintiff's personal
5 and household needs.

6 16. Plaintiff was unable to make payment on the account because of financial
7 setbacks.

8 17. Plaintiff sought legal representation to help Plaintiff through this bleak financial
9 period, and to deal with the unrelenting and stressful demands of Plaintiff's creditors and their
10 collection agents. Plaintiff hired attorney Irving L. Berg for legal representation.

11 18. Plaintiff was advised by the attorney that, once Plaintiff's creditors and their
12 collection agents were advised of attorney representation, the law required that the creditors and
13 their collection agents must leave Plaintiff alone and deal with the attorney.

14 19. On October 9, 2007, Plaintiff's attorney sent Defendant Beneficial a letter
15 advising of his representation of Plaintiff. Exhibit A is a copy of the letter sent to three offices of
16 Defendant Beneficial. The letter states, among other things:

17 **The captioned consumer is a client of mine. All**
18 **communications concerning my client's financial affairs,**
19 **including the captioned debt, and any other debts you claim**
owed by my client shall hereafter be made to this office in
writing.

20 20. Some date thereafter, Defendant Beneficial appointed Defendant Asset as its agent
21 to collect the alleged debt. Beneficial transferred and turned over to Defendant Asset Plaintiff's
22 account, including the letter of attorney representation (Exhibit A) and notes of Defendant
23 Beneficial's collection action taken against Plaintiff to collect the claim against Plaintiff.

24 21. On December 5, 2007, Defendant Asset, notwithstanding the notice of attorney
25 representation (Exhibit A), wrote Plaintiff directly, on its own letterhead, demanding payment of
26 the account. Exhibit B is a copy of the Asset letter.

27 22. Defendant Beneficial and its agent, Defendant Asset, are liable for sending a
28 collection letter, Exhibit B, to Plaintiff after notice of attorney representation. Defendants'

1 conduct violates Cal. Civ. Code § 1788.14(c), which prohibits:

2 (c) Initiating communications other than statements of
 3 account, with the debtor with regard to the consumer debt,
 4 when the debt collector has been previously notified in writing
 5 by the debtor's attorney that the debtor is represented by such
 6 attorney with respect to the consumer debt and such notice
 7 includes the attorney's name and address and a request by
 8 such attorney that all communications regarding the consumer
 9 debt be addressed to such attorney, unless the attorney fails to
 10 answer correspondence, return telephone calls, or discuss the
 11 obligation in questions.

12 23. Said conduct further violates 15 U.S.C. § 1692c(a)(2), which states a debt
 13 collector may not communicate with a consumer without the consumer's permission:

14 (2) if the debt collector knows the consumer is represented by an
 15 attorney with respect to such debt and has knowledge of, or can
 16 readily ascertain, such attorney's name and address, unless the
 17 attorney fails to respond within a reasonable period of time to a
 18 communication from the debt collector or unless the attorney consents
 19 to direct communication with the consumer....

20 CLAIM FOR RELIEF

21 24. Plaintiff incorporates by reference all of the foregoing paragraphs.

22 25. Defendants Beneficial and Asset violate Cal. Civ. Code § 1788.14(c) and 15
 23 U.S.C. §§ 1692c(a)(2) by communicating with Plaintiff after notice of attorney representation.

24 V. PRAYER

25 WHEREFORE, according to the remedies allowable under the California law and Federal
 26 law, as provided by Cal. Civ. Code § 1788.32:

27 The remedies provided herein are intended to be cumulative and
 28 are in addition to any other procedures, rights, or remedies under
 any other provision of law,

Plaintiff prays for damages as follows:

A. Statutory damages of \$2,000 as to Defendant Beneficial, pursuant to Cal. Civ.
 Code §§ 1788.30(b) and 15 U.S.C. § 1692k;

B. Statutory damages of \$2,000 as to Defendant Asset, pursuant to Cal. Civ. Code §
 1788.30(b) and 15 U.S.C. § 1692k;

C. Statutory damages of \$6,000 as to the Doe Defendants, each Doe Defendant to
 pay its proportionate share.

COMPLAINT SEEKING DAMAGES

CONTRERAS V. HSBC CONSUMER
 LENDING USA dba BENEFICIAL

1 D. Reasonable attorney's fees and costs, pursuant to Cal. Civ. Code § 1788.30 and 15
2 U.S.C. § 1692k(a)(3).

3 Dated: 4/21/08

4 /s/
Irving L. Berg
5 THE BERG LAW GROUP
145 Town Center, PMB 493
6 Corte Madera, California 94925
(415) 924-0742
7 (415) 891-8208 (Fax)

8 ATTORNEYS FOR PLAINTIFF

9
10 **JURY DEMAND**

11 Plaintiff demands trial by jury.

12
13 Dated: 4/21/08

14 /s/
Irving L. Berg

EXHIBIT A

THE BERG LAW GROUP
ATTORNEYS AND COUNSELORS AT LAW
145 Town Center, PMB 493
Corte Madera, California 94925
Phone: (415) 924-0742 Fax: (415) 891-8208
e-mail irvberg@comcast.net

IRVING L. BERG, ESQ.

October 9, 2007

Beneficial Customer Services
P. O. Box 8633
Elmhurst, IL 60126

Beneficial Customer Service
P. O. Box 8873
Virginia Beach, VA 23450-8873

Beneficial Customer Service
851 Van Ness Ave., Suite 2
San Francisco, CA 94109

Re: Elizabeth Contreras
Social Security No.: 617-98-9831
Creditor: Beneficial

Notice of Attorney Representation

Invitation to Debt Settlement Proposal

Dear Sir or Madam:

The captioned consumer is a client of mine. My client is experiencing severe financial problems. My office has been retained to assist in resolving these problems. Consideration is being given to payment of selected debts, to the extent reasonable offers are received. I ask you to submit by facsimile, to my office facsimile number, (415) 891-8202, your bottom line pay-off proposal.

Keep in mind that all communications concerning my client's financial affairs, including the captioned debt, and any other debts you claim are owed by my client, shall hereafter be considered confidential and made only to my office.

My client's Social Security number is noted above. Should you have any question regarding the identification of my client, send your inquiry to the undersigned.

Keep in mind that, so long as my client is represented by my office, **California and federal law prohibit you from contacting my client, my client's employer, or my client's family regarding the debts. All inquiries regarding my client's financial affairs shall be directed to the undersigned.** In the unlikely event that the legal relationship with my client is terminated, you will be notified in writing. Please advise as to your direct facsimile number.

Sincerely,

Irving L. Berg
ILB/rl

EXHIBIT B

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX